

Section 43. Nonconforming Uses and Structures

Hereinafter provided, no nonconforming use of land or buildings, nor any nonconforming structure shall be enlarged, changed, altered, or repaired, except in conformity with the following regulations:

- A. **TYPES OF NONCONFORMITY:** Any use of land or buildings which does not conform to use regulations prescribed in this ordinance shall be deemed to be a nonconforming use.
- B. **NONCONFORMING STATUS:** Any building or structure which does not conform to the lot area, front yard, side yard, rear yard, coverage, height, floor area ratio on conforming status. A nonconforming status under the provisions of this ordinance shall exist:
 - 1. When a use or structure, which does not conform to the regulations prescribed for the district in which such use or structure is located, was in existence and lawfully constructed, located, and operating on the effective date of this ordinance and has since been in regular and continuous use.
 - 2. When a use or structure, which does not conform to the regulations prescribed in the district in which such use or structure is located, was in existence at the time of annexation to the City of Grapevine and has since been in regular and continuous use.
- C. **REGISTRATION OF NONCONFORMING USES:** The operator, owner or owners of all nonconforming uses of land or buildings shall, within eighteen (18) months of the effective date of this ordinance, register such nonconforming use by obtaining from the Building Official a Certificate of Occupancy (nonconforming). Such Certificate of Occupancy (nonconforming) shall be considered as evidence of the legal existence of a nonconforming use, as contrasted to an illegal use or violation of this Ordinance. The Building Official shall maintain a register of all Certificates of Occupancy issued for nonconforming uses and shall, on written request and payment of a fee, issue a duplicate certificate to anyone having a proprietary interest in the property in question. A nonconforming structure need not be registered.
- D. **TERMINATION OF NONCONFORMING USES:**
 - 1. It is the declared purpose of this Ordinance that nonconforming uses be eventually discontinued and the use of the premises be required to conform to the regulations prescribed herein having due regard for the investment in such nonconforming uses. Nonconforming uses shall be discontinued in the following manner:

- a. Any nonconforming use not conducted within a building shall be discontinued within two (2) years from the date this Ordinance shall become effective.
 - b. Any nonconforming use conducted partly within a building and partly without a building shall be discontinued within five (5) years from the date this Ordinance shall become effective.
 - c. Any nonconforming use conducted wholly within a building shall be discontinued within ten (10) years from the date this Ordinance shall become effective.
2. A nonconforming use may be occupied, used, and maintained in good repair, but it shall not be remodeled or enlarged except as hereinafter provided.
3. The right to operate a nonconforming use shall cease and such use shall be terminated under any of the following circumstances.
 - a. Whenever a nonconforming use is abandoned, all nonconforming right shall cease, and the use of the premises shall henceforth be in conformance to this Ordinance. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and the actual act of discontinuance. Any nonconforming use which is discontinued for, or which remains vacant for a period of six (6) months shall be considered to have been abandoned.
 - b. The violation of any of the provisions of this Ordinance or violation of any Ordinance of the City of Grapevine with respect to a nonconforming use shall terminate immediately the right to operate such nonconforming use.
 - c. Whenever a nonconforming use is changed to a conforming use by rezoning so as to achieve compliance with the provisions of a new or different zoning district.
 - d. Whenever a nonconforming use is changed to a conforming use under the provision of this section.
 - e. Whenever a structure, in which a nonconforming use is housed, operated, or maintained, is destroyed or damaged by fire or other causes to the extent of more than sixty (60) percent of the replacement cost of the structure, on the date of the damage, the right to operate such nonconforming use shall terminate.
 - f. The right to maintain or operate a nonconforming use may be

terminated by the Board of Adjustment in accordance with provisions of Section 67A of this Ordinance.

E. CHANGING NONCONFORMING USES:

1. Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not thereafter be changed back to a nonconforming use.
2. The Board of Adjustment may grant a change of use from one nonconforming use to another nonconforming use provided such change is to a use permitted in a zoning district where the original nonconforming use would be permitted, or provided that such change is to a use permitted in a more restrictive classification. However, such change of use and occupancy shall not tend to prolong the life of a nonconforming use. Upon review of the facts in accordance with Section 67A, the Board of Adjustment may establish a specific period of time for the return of the occupancy to a conforming use.
3. The Board of Adjustment may approve the remodeling or enlargement of a nonconforming use when such an enlargement would not tend to prolong the life of the nonconforming use. Upon review of the facts, the Board of Adjustment may establish a specific period of time for the return of the occupancy to a conforming use.

F. LIMITATIONS ON CHANGING NONCONFORMING USES: No nonconforming use shall be changed to another nonconforming use, which requires more off-street parking spaces or off-street loading space than the original nonconforming use, unless additional off-street parking and loading space is provided so as to comply with the requirements of Sections 55 and 56.

The number of dwelling units or rooms in a nonconforming residential use shall not be increased so as to exceed the number of dwelling units or rooms existing on the effective date of this Ordinance.

No nonconforming use may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of this ordinance except to provide off-street loading or off-street parking space upon approval of the Board of Adjustment.

All nonconforming uses being expanded under the provisions of this Ordinance shall comply with the other applicable provisions of this Ordinance.

G. TERMINATION OF NONCONFORMING STRUCTURES:

1. In the event of damage or destruction of a nonconforming structure to the

extent of sixty (60) percent of the replacement cost of such structure on the date of such damage, such nonconforming structure may be rebuilt only after public hearing and favorable action by the Board Of Adjustment as provided by Section 67A.

2. Whenever a nonconforming structure is determined to be obsolete, dilapidated, or substandard by the Board of Adjustments, the right to operate, occupy, or maintain such structure may be terminated by action of the Board of Adjustment as provided in Section 67A and such structure shall be demolished.

H. SPECIAL REGULATIONS FOR PUBLIC AND DENOMINATIONAL SCHOOLS: All public schools, denominational schools having a curriculum equivalent to public elementary or secondary schools, and all accessory buildings and structures normally associated therewith, including stadiums and field houses, which are built and existing on the effective date of this Ordinance, shall be considered as conforming to the provision of this Ordinance. In the event such school building has been constructed with lesser front yards, or rear yards, or with greater coverage, of floor area ratio than herein specified, such building may be altered, remodeled, enlarged, or increased in height but no provisions herein shall be construed as to require greater yards, or lesser coverage, or floor area ratio than provided by the existing construction and building permits shall be issued if in compliance with the provisions of the building code.

I. RIGHT-OF-WAY ACQUISITION BY GOVERNMENTAL AGENCY

1. *Definitions.* As used in this section, the following terms shall have the respective meanings ascribed to them:

Governmental agency shall mean the United States of America, State of Texas, County of Tarrant, the City of Grapevine, or any other governmental agency with the ability to exercise eminent domain powers.

Right-of-way acquisition shall mean the securing of right-of-way through negotiation, purchase, bargain, trade, donation, condemnation, or other means by use or threat of eminent domain, but not including the dedication of right-of-way through platting or zoning processes.

Damages to the remainder shall mean the diminution or reduction of value of the remainder property suffered as a result of the acquisition of a portion of property for a public purpose.

2. *Exemption permitted.* In the event a right-of-way acquisition by a

governmental agency causes a property or its existing improvements to be in violation of a City zoning ordinance, subdivision rule, or other land use regulation or ordinance, the property shall be exempt from the provision to the extent the violation is caused by the right-of-way acquisition, subject to the following:

(A) *Zoning Change.*

- (1) The exemption shall not apply to a property that undergoes a zoning change initiated by the property owner subsequent to the right-of-way acquisition; instead, the property shall have a non-conforming status to the extent that any nonconformance with city ordinances resulted from a right-of-way acquisition by a governmental agency prior to the rezoning, and shall be treated as a nonconforming use or structure pursuant to the City's comprehensive zoning ordinance.
- (2) A zoning change initiated by the City shall not cause a property to lose the exemption provided by this section for property affected by right-of-way acquisitions.

(B) *Safety Hazard.* Nothing in this provision shall be construed to permit any site element to create a traffic safety hazard or another life safety hazard.

(C) *Compensation for Noncompliance.*

- (1) The exemption shall not apply to property if the right-of-way acquisition renders the remainder of the property unusable, and the governmental agency compensates the property owner for the damage to the remainder. Where such compensation is provided, the property owner is responsible for any curative measures necessary to bring the property in compliance with city codes, ordinances, and regulations.
- (2) The exemption shall not apply to the property if the governmental agency offered compensation to the property owner for demolition, removal, relocation, or replacement of improvements or other measures

curative of the violation of City codes or ordinances caused by the right-of-way acquisition.

- (3) For property ineligible for an exemption under this subsection (C), the development services director is authorized to:
 - a. Provide notice to any affected property owner, lienholder, and/or certificate of occupancy holder, listing any items of noncompliance; and
 - b. File an affidavit in the Tarrant County Deed Records noting the item(s) of noncompliance, advising that compensation was paid for such noncompliance, and that a certificate of occupancy shall not issue until such noncompliance is cured. Once the property and its improvements are brought into full compliance with all applicable ordinances of the City, the planning director shall file an affidavit in the Tarrant County Deed Records noting such compliance.
 - (4) If a property is ineligible for an exemption under this subsection (C), the building official is authorized to revoke a certificate of occupancy of any building or structure for noncompliance with a code, ordinance, or regulation.
 - (5) The Building Board of Appeals Commission is authorized to issue an order of demolition a minimum of 90 days after the certificate of occupancy has been revoked for any building or structure on property ineligible for an exemption under subsection (C)(1).
3. *Effective Date.* The provisions of this section shall apply to any property acquired by eminent domain after January 19, 2010.